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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,029

08/18/2006

Kenji Sato

8017-1196

4127

466 7590 02/02/2009

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EXAMINER

HAGAN, SEAN P

ART UNIT

PAPER NUMBER

2828

MAIL DATE

DELIVERY MODE

02/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/590,029</p>	<p>Applicant(s) SATO ET AL.</p>	
	<p>Examiner SEAN HAGAN</p>	<p>Art Unit 2828</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Minsun Harvey/
Supervisory Patent Examiner, Art Unit 2828

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that the specific claimed detuning amount is patentable over the prior art for reasons of incompatibility between Tamura et al. ("Ultrafast electroabsorption modulators with traveling-wave electrodes", Lasers and Electro-Optics Society, 2001. LEOS 2001. The 14th Annual Meeting of the IEEE, Vol. 1, 12-13 Nov. 2001 pp. 97-98, hereafter Tamura) and Ledentsov et al. (Ledentsov, US Patent 2003/0206741). Tamura is cited to teach a number of claimed elements in the independent claim but fails to teach the claimed detuning amount and examiner relies upon Ledentsov for this purpose. Applicants argue that since the modulator of Ledentsov is located within the laser cavity, the detuning amount disclosed is not applicable to Tamura wherein the modulator is located outside of the laser cavity.

While there are differences in how the light is ultimately modulated, both modulators function on principles related to the absorption band of the modulator which is affected by the detuning amount and, thus, the detuning amount is a variable of concern with both devices.

Ledentsov discloses significant information on detuning amounts from 0 to 100meV as related to the absorption observed and the affects this absorption has on the light. While not all affects discovered by Ledentsov would have been expected to be observed in a modulator located external to the laser cavity, the results presented in Ledentsov are still indicative of the basic behavior of an absorption based modulator and, thus, it would have at least been obvious to try detuning values presented in Ledentsov within a device according to the teachings of Tamura.

Applicants make mention of unexpected results, however the results mentioned appear to relate to the optimization of result effective variables within known or obvious ranges. In fact, page 13 of response received 12 June 2008 provides a graph denoting a relation between detuning and the transmittance of the modulator when there is no electric field with indications of ranges within admitted prior art and the range claimed. The graph appears to be largely linear from the greater half of the admitted prior art range to the claimed range (which begins 2meV away from the admitted prior art range) and so it is unclear how the result portrayed in the graph is unexpected.